

RELEASED IN PART UNCLASSIFIED
B1, 1.4(D)

ACTION WHA-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	DOEE-00	DS-00	EB-00	EUR-00	VC-00	H-00	TEDE-00
	INR-00	IO-00	LAB-01	L-00	VCE-00	AC-00	NSAE-00
	OIC-00	PA-00	MCC-00	PRS-00	ACE-00	P-00	FMPC-00
	SP-00	STR-00	TRSE-00	R-00	DSCC-00	PRM-00	DRL-00
	G-00	NFAT-00	SAS-00	/001W			

-----923336 091937Z /38

P 091909Z DEC 04
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC PRIORITY 8676
INFO AMEMBASSY BOGOTA PRIORITY
AMEMBASSY BRASILIA PRIORITY
AMEMBASSY LA PAZ PRIORITY
AMEMBASSY LIMA PRIORITY
AMEMBASSY MADRID PRIORITY
AMEMBASSY QUITO PRIORITY
NSC WASHDC PRIORITY
HQ USSOUTHCOM MIAMI FL PRIORITY

C O N F I D E N T I A L CARACAS 003805

NSC FOR CBARTON
USCINCSO ALSO FOR POLAD

E.O. 12958: DECL: 05/25/2014
TAGS: PGOV, PHUM, KJUS, VE
SUBJECT: VENEZUELA'S ATTORNEY GENERAL CHALLENGES APRIL 2002
TSJ DECISION

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d
)

Summary

1. (U) Attorney General Isaias Rodriguez asked Venezuela's Supreme Court (TSJ) December 2 to overturn its decision which freed four alleged military leaders of the April 2002 events and rejected his request to try the officers for military rebellion. The case is important because it established the "power vacuum" doctrine to explain the April events, against the Chavez administration's argument that there was a coup. The A/G argues that the Constitutional Chamber should review the decision to correct several "gross errors" committed by the Court. TSJ President Ivan Rincon promised the Chamber would accept such a case in a November 25 interview, leading

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: APPEALS REVIEW PANEL
APPEAL ACTION: ORIGINAL DECISION UPHELD
REASON(S): B1, 1.4(D)
DATE/CASE ID: 25 SEP 2007 200404750

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: MELVIN E SINN
DATE/CASE ID: 30 JUN 2005 200404750

UNCLASSIFIED

UNCLASSIFIED

to speculation about a concerted GOV strategy. Critics have called the request a threat to the rule of law, which undermines the basic legal precept of double jeopardy, and the latest example of the "judicialization" of politics. End Summary

----- A/G Asks TSJ to Overturn Itself -----

2. (U) Attorney General Isaias Rodriguez filed a motion with the Constitutional Chamber of the Supreme Court December 2, asking it to review the August 14, 2002 TSJ decision not to allow two generals and two admirals to be tried for military rebellion in relation to the events of April 2002. (Note: The TSJ in plenary session is responsible for authorizing prosecutions of high ranking government and military officials.) The officers were Gen. Efrain Vesquez Velasco, Gen. Pedro Pereira, Adm. Hector Ramirez Perez, and Adm. Daniel Comisso Urdaneta. Rodriguez argues that Venezuela's constitution gives the Constitutional Chamber the right to review the constitutional decisions of all other courts, including those taken by the Supreme Court in plenary session. Franklin Arrieché, author of the decision, and Vice President of the Supreme Court until his removal by the National Assembly on June 15, told reporters December 3 that the Plenary's decision was penal in nature, and thus not subject to the Constitutional Chamber's constitutional review powers.

----- Plenary Chamber Ruled "No Coup" -----

3. (U) Rodriguez himself sought to charge the four officers in 2002 with military rebellion. On August 14 of that year, the TSJ refused, arguing: 1) That the specific charge brought before the court had no penalty in the Military Penal Code; 2) That the facts of April 11 did not back up a charge of military rebellion, because the officers did not lead armed troops against the government, but rather refused orders to lead armed troops against the people; 3) That the officers acted in good faith believing President Chavez had resigned, as Gen. Lucas Rincon had declared publicly. The vote was 11 to 9, with two alternate justices, who split their votes, replacing two hard line Chavista justices. This decision established the "power vacuum" doctrine to explain what happened in April 2002, as opposed to the "coup" theory pushed by Rodriguez and other Chavista officials.

UNCLASSIFIED

UNCLASSIFIED

----- Gross Errors -----

4. (U) Rodriguez asserts the points on which the TSJ based its decision are "gross errors" which the Constitutional Chamber should review. According to Rodriguez, the Court should suggested applying another article of the Military Penal Code to punish rebellion, if the one the prosecutor cited had no penalty. Arrieché dismissed this argument in comments to reporters, pointing out it is improper for judges to do so under an adversarial legal system. The A/G further argued that it was improper for the Court to examine the details of the case, as in whether troops were used, to decide if the case had merit. Rodriguez also attacked the

"Rincon argument", saying Gen. Rincon's announcement did not absolve all actors of responsibility, especially those who were with Chavez and knew he had not resigned. Finally, Rodriguez questioned the basis under which alternates joined the plenary to tip the balance towards a negative vote. Rodriguez suggested that if the Constitutional Chamber agreed with him, the Moral Council (A/G, Controller General, and Ombudsman) would consider suspending the judges who were responsible for the errors, and calling on the National Assembly to remove them. This could effect six sitting justices.

----- Rincon Offers Review -----

5. (U) Supreme Court Chief Justice Ivan Rincon seemed to invite Rodriguez' motion in an interview on VTV November 25. In the interview, Rincon suggested that he knew Rodriguez was planning the motion, and said if he presented it, the Constitutional Chamber would accept the case. Rincon said that the TSJ decision had created a sensation of impunity in the country, and may therefor have contributed to the death of prosecutor Danilo Anderson. He mentioned various times the fact that the Court had two alternates sitting on it when it made its decision. (Note: This may be the basis on which the Constitutional Chamber overrules the decision.)

----- Double Jeopardy -----

6. (U) Alberto Arteaga, former dean of legal studies at the

UNCLASSIFIED

UNCLASSIFIED

UCV and frequent commentator on penal issues, called the case a grave precedent, in a newspaper interview on December 5. The Constitutional Chamber's authority to review cases for constitutional reasons is unquestionable, according to Arteaga. What Rodriguez is challenging, however, is a penal decision, from the highest court, in favor of the accused. To overturn the case, and allow a trial to go forward, would constitute double jeopardy, and undermine the entire judicial system, according to Arteaga. Penal Chamber Justice Blanca Rosa Marmol de Leon called the A/G's request very dangerous, as it would add judicial uncertainty to all the cases that might be subject to this new level of judicial review. She also rejected that the decision denied that there was a coup, saying the decision ruled only on the existence or not of the crime of military rebellion.

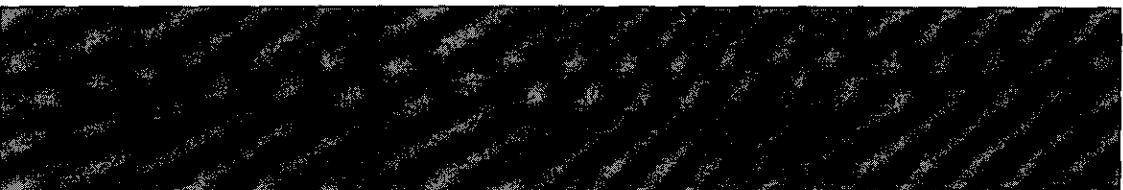
Justice or Politics?

7. (U) National Assembly Deputy Nicolas Maduro (Movimiento Quinto Republica) December 2 said the move was long overdue, and a fitting tribute to assassinated prosecutor Danilo Anderson. He called for a trial which would reveal the role in the April 11 events of economic, political and military factors, as well as the role of the USG, El Salvador, Spain, and Colombia. Deputy Carlos Talbante (Movimiento Al Socialismo) called it a decision which would accentuate retaliation and vengeance. Deputy Pastor Heydra (Accion Democratica) said the decision revealed the totalitarian, authoritarian, and autocratic nature of the regime.

Who is Left to Decide?

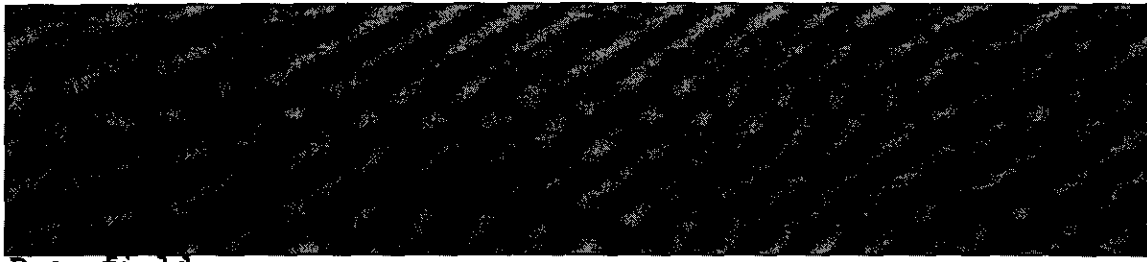
8. (U) The Constitutional Chamber assigned Justice Carmen Zuleta de Merchan to decide if the case should be accepted. She is the only justice in the Chamber who did not rule on the case on August 14. If the Chamber accepts the case, alternate justices should make the decision in behalf of the four other justices who ruled in August 2002.

Comment



UNCLASSIFIED

UNCLASSIFIED



Brownfield

NNNN

UNCLASSIFIED